In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-593

CENTRAL TABLET MANUFACTURING CO.,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner manufactured and sold educational and art supplies. On September 10, 1965, an accidental fire destroyed its equipment and building, none of which was subsequently repaired or replaced. The building and equipment were covered by fire and extended coverage insurance and petitioner timely notified its insurance carrier of the loss.

The insurance carrier did not question either the validity of the insurance contracts or the fulfillment of the conditions for payment. It did, however, dispute the amount to be paid under each policy. Negotiation of the claims for the building and equipment began on or about November 1, 1965. On May 14, 1966, petitioner's shareholders adopted a plan of dissolution and complete

liquidation pursuant to Section 337 of the Internal Revenue Code of 1954. Shortly thereafter, petitioner's claims with the insurance company were settled (Pet. App. B 23-24).

Petitioner realized a gain upon this transaction but excluded it from its taxable income on the ground that the gain was not recognizable under Section 337(a) of the Code. That provision permits a corporation to exclude gain from the sale or exchange of its property within the 12-month period after the adoption of a plan of complete liquidation. Since 1964, the Internal Revenue Service has ruled gains from involuntary conversion are entitled to the benefits of Section 337.[1] On audit, the Commissioner of Internal Revenue determined that the non-recognition provisions of Section 337 did not apply because the involuntary conversion of petitioner's property occurred upon its destruction, which was prior to the beginning of the prescribed 12-month period.

The district court upheld petitioner's claim for refund under Section 337, on the ground that the involuntary conversion of the property occurred upon agreement with the insurance carrier as to the amount of the insurance proceeds, which was within 12 months after the adoption of the plan of liquidation. In so holding, it followed the decision of the Eighth Circuit in *United States* v. *Morton*, 387 F. 2d 441, which is squarely in point (Pet. App. A 11-21). The court of appeals reversed, expressly declining to adopt the reasoning of *Morton* (Pet. App. B 22-30).

As petitioner states (Pet. 4-5), there is a conflict of decisions on the question whether, for purposes of

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[1] Rev. Rul 64-100, 1964-1 Cum. Bull. (Part 1) 130.

Section 337, an involuntary conversion occurs upon the destruction of the property or upon the agreement as to the amount of the insurance proceeds.[2] We therefore do not oppose the granting of the petition for a writ of certiorari.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

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[2] We are advised by the Internal Revenue Service that the issue is presently pending at the administrative level in nine cases involving a total of $603,196 in taxes. It is also currently awaiting oral argument in the Ninth Circuit (No. 73-1384) on the government's appeal of *Kinney* v. *United States*, 73-1 U.S.T.C., par. 9140 (N.D. Cal.), involving a claimed refund of $13,413.62. While the Ninth Circuit has not yet scheduled argument in the case, it is expected that it will not be heard for at least six months.